IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 261 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 11/01/2005 in WP NO : 76 OF 2005 on the file of the High Court.)

Between:

Sri Venkateshwara Service Station, rep.by its Managing Partner,
G.Padmavathi,
W/o.G.Venugopala Rao, Indian Oil Dealer, 1-52/A,
Madhapur, RR District.

..... APPELLANT

AND

M/s. Indian Oil Corporation Ltd., rep.by its Chief Divisional Retail Sales Manager,
3-6-436, to 438, II floor, 'Naspur House'
Himayathnagar, Hyderabad.

.....RESPONDENT

Counsel for the Appellant : MR.V.VENKATARAMANA

Counsel for the Respondent : MR.P.V.SANJAY KUMAR

The Court made the following :

ORAL JUDGMENT:

(per Hon'ble The Chief Justice)

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1. Challenge is to the order of the learned single Judge declining to exercise jurisdiction under Article 226 of the Constitution of India relegating the petitioner – appellant to remedy available to it as per the terms of the agreement between the parties.

2. Petitioner, a dealer of petroleum products, had entered into an agreement with respondent – Corporation on 05.05.1998. Show-cause notice was served upon the petitioner on 27.04.2004 regarding breach of terms of conditions of agreement. Petitioner submitted her reply on 21.07.2004 and ultimately on 06.01.2005 an order was passed by respondent – Corporation holding that explanation to the charges is not found to be factually correct and convincing. Petitioner is found to have committed the following four major irregularities, namely,

1. Decantation of unauthorized product into the MS underground tank at the retail outlet.
2. Failure of MS sample with respect to RON.
3. MS stock variation in surplus of 6296 litres.
4. Short delivery of product in 4 dispensing units.

Petitioner thus was found to have violated Clauses 25, 26, 27, 28, 29 & 43 of the dealership agreement. In the light of the serious major irregularities committed by the petitioner with scant regard and respect for the goodwill of the Corporation, it was considered that this is a fitting and deserving case for resorting to the punishment of termination of the dealership under Clauses 56(a)(i) and (k) of the dealership agreement dated 05.05.1998 r/w Marketing Discipline Guidelines. Questioning this, writ petition was filed which was disposed of with the observation as aforementioned.

3. Learned counsel for the appellant, placing reliance upon the decision of the Supreme Court reported in **HARBANSLAL SAHNIA Vs. INDIAN OIL CORPORATION LIMITED (1),** submits that petitioner – appellant ought not to have been relegated to the remedy of arbitration inasmuch as that is not the effective remedy. Moreover as per the terms of the agreement, arbitration will have to be invoked before the Courts in the city of

(1) (2003) 2 SCC 107.

Madras having jurisdiction in the matter. Thus the petitioner – appellant is also deprived of getting any relief by invoking jurisdiction of the Courts in Andhra Pradesh under Section 9 of Arbitration and Conciliation Act, 1996.

4. Reliance placed by the learned counsel for the appellant upon the decision of the Supreme Court in the case of Harbanslal's case (1 supra) is totally misconceived. In the said case the appellant therein was served with termination order of dealership forthwith and in the earlier part of the notice, termination refers to other grounds and the ground relied upon for termination

was not at all mentioned in the notice. The Supreme Court has held that where dealership, which was bread and butter, came to be terminated for irrelevant and non-existent cause, petitioner should have been allowed relief by the High Court itself instead of driving to the need of initiating arbitration proceedings. The Supreme Court had laid down certain guidelines where in the event of alternative remedy being available, petitioner need not be relegated to the alternative remedy saying …

> " So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenges. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings".

5. The instant case is not a case which is covered by any of the exceptions to the rule and moreover we have gone through the order which is a reasoned one. The order impugned in the writ petition was passed after issuing show-cause notice and getting explanation. Learned counsel for the appellant submits that learned single Judge ought to have gone into the merits. This submission has no force. Once a person is relegated to alternative remedy, there is no need for the Court to go into the merits of the case. Whether or not a person has to be relegated to the alternative remedy has to be decided at the threshold and at the threshold itself the learned single Judge disposed of the writ petition holding that it is not a fit case to exercise jurisdiction under Article 226 of the Constitution of India.

6 . For the foregoing discussion, we do not find any merit in the appeal. Accordingly the same is dismissed. However, we make it clear that any observations made by us shall not come in the way of the petitioner seeking appropriate relief from the competent forum. No costs.

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DEVINDER GUPTA. C.J.,

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B. SESHASAYANA REDDY. J.,

Dated: 17.02.2005.

VRK.

To

1. The Chief Divisional Retail Sales Manager,M/s. Indian
Oil Corporation Ltd.,
3-6-436, to 438, II floor, 'Naspur House'
Himayathnagar, Hyderabad.

2. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE B. SESHASAYANA REDDY.

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W.A.NO. 261 OF 2005.

(Judgment of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 17.02.2005.

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